

invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology. A comment to OMB is most effective if OMB receives it within 30 days of publication.

**FOR FURTHER INFORMATION CONTACT:**

Deborah Boothe or T. Glenn Foster, U.S. Department of Transportation, Office of Hazardous Materials Standards (PHH-11), Pipeline and Hazardous Materials Safety Administration, 1200 New Jersey Avenue, SE., East Building, 2nd Floor, Washington, DC 20590-0001, Telephone (202) 366-8553.

**SUPPLEMENTARY INFORMATION:** Section 1320.8(d), Title 5, Code of Federal Regulations requires PHMSA to provide interested members of the public and affected agencies an opportunity to comment on information collection and recordkeeping requests. This notice identifies information collection requests that PHMSA will be submitting to OMB for renewal and extension. These information collections are contained in 49 CFR parts 110 and 130 and the Hazardous Materials Regulations (HMR; 49 CFR parts 171-180). PHMSA has revised burden estimates, where appropriate, to reflect current reporting levels or adjustments based on changes in proposed or final rules published since the information collections were last approved. The following information is provided for each information collection: (1) Title of the information collection, including former title if a change is being made; (2) OMB control number; (3) abstract of the information collection activity; (4) description of affected public; (5) estimate of total annual reporting and recordkeeping burden; and (6) frequency of collection. PHMSA will request a three-year term of approval for each information collection activity and, when approved by OMB, publish notice of the approval in the **Federal Register**.

PHMSA requests comments on the following information collection:

*Title:* Testing, Inspection and Marking Requirements for Cylinders.

*OMB Control Number:* 2137-0022.

*Type of Request:* Extension of a currently approved information collection.

*Abstract:* Requirements in § 173.301 for qualification, maintenance and use of cylinders require that cylinders be periodically inspected and retested to ensure continuing compliance with packaging standards. Information collection requirements address registration of retesters and marking of cylinders by retesters with their identification number and retest date following conduct of tests. Records showing the results of inspections and retests must be kept by the cylinder owner or designated agent until expiration of the retest period or until the cylinder is reinspected or retested, whichever occurs first. These requirements are intended to ensure that retesters have the qualifications to perform tests and to identify to cylinder fillers and users that cylinders are qualified for continuing use. Information collection requirements in § 173.303 require that fillers of acetylene cylinders keep, for at least 30 days, a daily record of the representative pressure to which cylinders are filled.

*Affected Public:* Fillers, owners, users and retesters of reusable cylinders.

*Recordkeeping:*

*Estimated Number of Respondents:* 139,352.

*Estimated Number of Responses:* 153,287.

*Estimated Annual Burden Hours:* 171,462.

*Frequency of Collection:* On occasion. PHMSA specifically requests comments on the information collection. Please direct your request for a copy of this information collection to Deborah Boothe or T. Glenn Foster, U.S. Department of Transportation, Office of Hazardous Materials Standards (PHH-11), Pipeline and Hazardous Materials Safety Administration, 1200 New Jersey Avenue, SE., East Building, 2nd Floor, Washington, DC 20590-0001, Telephone (202) 366-8553.

Issued in Washington, DC on November 24, 2008.

**Edward T. Mazzullo,**

*Director, Office of Hazardous Materials Standards.*

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## DEPARTMENT OF TRANSPORTATION

### Pipeline and Hazardous Materials Safety Administration

#### Office of Hazardous Materials Safety; Notice of Delays in Processing of Special Permits Applications

**AGENCY:** Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

**ACTION:** List of Applications Delayed more than 180 days.

**SUMMARY:** In accordance with the requirements of 49 U.S.C. 5117(c), PHMSA is publishing the following list of special permit applications that have been in process for 180 days or more. The reason(s) for delay and the expected completion date for action on each application is provided in association with each identified application.

**FOR FURTHER INFORMATION CONTACT:**

Delmer F. Billings, Director, Office of Hazardous Materials Special Permits and Approvals, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, East Building, PHH-30, 1200 New Jersey Avenue Southeast, Washington, DC 20590-0001, (202) 366-4535.

#### Key to "Reason for Delay"

1. Awaiting additional information from applicant.
2. Extensive public comment under review.
3. Application is technically complex and is of significant impact or precedent-setting and requires extensive analysis.
4. Staff review delayed by other priority issues or volume of special permit applications.

#### Meaning of Application Number Suffixes

N—New application.

M—Modification request.

PM—Party to application with modification request.

Issued in Washington, DC, on November 21, 2008.

**Delmer F Billings,**

*Director, Office of Hazardous Materials, Special Permits and Approvals.*

Application No.	Applicant	Reason for delay	Estimated date of completion
<b>Modification to Special Permits</b>			
14167-M .....	Trinityrail, Dallas, TX .....	4	12-31-2008
8723-M .....	Alaska Pacific Powder Company, Anchorage, AK .....	1	12-31-2008
<b>New Special Permit Applications</b>			
14643-N .....	World Airways, Inc., Peachtree City, GA .....	3	11-30-2008
14668-N .....	Lincoln Composites, Lincoln, NE .....	1	02-28-2009
14689-N .....	Trinity Industries, Inc., Dallas, TX .....	2,3	11-30-2008

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## DEPARTMENT OF TRANSPORTATION

### Surface Transportation Board

[STB Finance Docket No. 35181]

#### Indiana Rail Road Company—Petition for Declaratory Order

**AGENCY:** Surface Transportation Board.

**ACTION:** Institution of declaratory order proceeding; request for comments.

**SUMMARY:** In response to a petition filed by Indiana Rail Road Company (INRD) on October 7, 2008, the Board is instituting a declaratory order proceeding under 49 U.S.C. 721 and 5 U.S.C. 554(e). The Board seeks to determine whether a track INRD proposes to construct from its east-west main line at Dugger, IN, to a new coal operation south of that main line will be a spur track exempt from Board approval under 49 U.S.C. 10906 or a line of railroad subject to the Board's jurisdiction and requiring Board approval under 49 U.S.C. 10901. The Board seeks public comment on this matter.

**DATES:** Comments are due by January 16, 2009. Replies are due by February 5, 2009.

**ADDRESSES:** Send an original and 10 copies of any comments, referring to STB Finance Docket No. 35181, to: Surface Transportation Board, 395 E Street, SW., Washington, DC 20423-0001. In addition, send one copy of comments to INRD's representative, John Broadley, 1054 31st Street NW., Suite 200, Washington, DC 20007.

**FOR FURTHER INFORMATION CONTACT:** Joseph H. Dettmar, (202) 245-0395. [Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at: 1-800-877-8339].

**SUPPLEMENTARY INFORMATION:** INRD's petition for declaratory order concerns

the proposed construction of a track approximately 5 miles long from INRD's east-west main line at Dugger to a new coal operation in the coal bearing area south of the INRD east-west main line. INRD requests that the Board issue a decision stating that the proposed track will be a "spur," and thus would be exempt from Board regulation pursuant to 49 U.S.C. 10906.

The proposed track, which INRD will construct, will serve a coal mining operation run by a subsidiary of Peabody Energy—the Black Beauty Coal Company (collectively, Peabody). The track will run west from INRD's east-west main line for approximately one mile, then turn south and run almost directly to a coal loadout and loop track that Peabody will construct to serve the new mine, the Farmsburg Mine, Bear Run Pit.

The Board does not exercise licensing authority "over construction, acquisition, operation, abandonment, or discontinuance of spur \* \* \* tracks." 49 U.S.C. 10906. The determination of whether a particular track segment is a "railroad line" requiring Board authorization under 49 U.S.C. 10901(a), or an exempt spur turns on the intended use of the track segment. *Nicholson v. I.C.C.*, 711 F.2d 364, 368 (DC Cir. 1983), cert. denied, 464 U.S. 1056 (1984). Exempt spurs are "commonly constructed either to improve the facilities required by shippers already served by the carrier or to supply the facilities to others, who being within the same territory and similarly situated are entitled to like service from the carrier." *Texas & Pacific Ry. Co. v. Gulf, Colorado & Santa Fe Ry. Co.*, 270 U.S. 266, 278 (1926) (*Texas & Pacific*). In contrast, if a railroad constructs tracks that extend substantially its line into new territory, then the new track is an extension subject to Board licensing requirements and not an exempt "spur." *Id.*

Petitioner asserts that the track proposed to be constructed here meets the test for spur track set forth in *Texas & Pacific* because the track: (1) Will not

invade the territory of any other railroad, as the closest railroad is a CSXT main line track located approximately 6.2 miles west of the new Peabody coal mine, and (2) will not constitute a significant extension of INRD's line into new territory as INRD and its predecessors have historically served this area through other spurs off the existing INRD main lines.<sup>1</sup>

INRD further argues that finding this track to be an exempt spur would be consistent with the Supreme Court's holding in *United States v. Idaho*, 298 U.S. 105 (1936) because: (1) The track will be built pursuant to an agreement with the shipper—Peabody, (2) either Peabody or its customers will enter into contracts for transportation that will make financing possible, (3) the shipper to be served by the track, Peabody, will provide a large part of the right-of-way—4.2 of the approximate 5 miles, (4) the proposed track will be stub-ended, and (5) the track will serve only one shipper.

Under 5 U.S.C. 554(e), the Board has discretionary authority to issue a declaratory order to terminate a controversy or remove uncertainty. A declaratory order proceeding is thus instituted in this proceeding to invite broad public comment. Any person seeking to participate in support of, or in opposition to, INRD's petition may submit written comments to the Board regarding whether the proposed track is a "spur."

Board decisions, notices, and filings in this and other Board proceedings are available on our Web site at <http://www.stb.dot.gov>.

Decided: November 25, 2008.

<sup>1</sup> Regarding this last factor, petitioner also cites the Board's holding in *New York City Economic Development Corporation—Petition for Declaratory Order*, STB Finance Docket No. 34429 (STB served July 15, 2004).